

AMENDMENTS TO THE DRAWINGS

The attached sheets of drawings include formal drawings of FIGS. 1-8. These sheets numbered 1-7 and including FIGS. 1-8 replace original sheets 1-7, which include FIGS. 1-8. FIGS. 1-8 have been replaced to comply with 37 C.F.R. §1.121(d).

Attachment: Replacement sheets

REMARKS

Status of the Claims

The pending Office Action addresses and rejects claims 1-6, 8, 10-18, and 27-55. Reconsideration is respectfully requested based on the remarks herein.

Amendments to the Claims

Independent claim 1 is amended to recite that the first and second pathways of the guide member extend substantially parallel to at least a portion of a front surface of the distal portion of the elongate member. Independent claim 40 is similarly amended to recite that the first and second pathways extend substantially parallel to at least a portion of the distal, tissue-retracting portion of the elongate member. Claim 40 is also amended to reflect a previously made amendment by correcting reference from “the at least one pathway” to “the first and second pathways.” Support for these amendments can be found throughout the specification and drawings, for example in claim 24 and in paragraphs [0032] and [0033]. No new matter is added.

Examiner Request for Drawings

Formal drawings are attached, as discussed above, in response to the Examiner’s request for corrected drawings.

Applicants Request Regarding Future Office Actions

Applicants note that the Examiner has not identified the portions of U.S. Patent No. 5,558,622 of Greenberg (“Greenberg”) relied upon for multiple elements recited in at least claims 37-54 as discussed further below, thereby making it very difficult if not impossible for Applicants to understand the Examiner’s interpretation of Greenberg as applied to the claims and to present an appropriate response. Accordingly, Applicants respectfully request that should the Examiner maintain the rejection of claim 37-54 over Greenberg, alone or in combination with one or more additional references, that the next Office Action be made non-final, and that the Examiner particularly point out the portions of Greenberg relied upon to reject claims 37-54, in order to

properly establish a clear issue between the Examiner and Applicants. *See* MPEP §706.07.

Furthermore, although Applicants respond to the Examiner's intended but unstated rejection of claims 31-36 and 55 as best as possible below, Applicants respectfully request that should the Examiner maintain the rejection of claims 31-36 and 55 as anticipated by Greenberg that the next Office Action be made non-final, and that the Examiner particularly point out the portions of Greenberg relied upon to reject claims 31-36 and 55, in order to properly establish a clear issue between the Examiner and Applicants because it is unclear and absent from the record why claims 31-36 and 55 are being rejected. *See* MPEP §706.07.

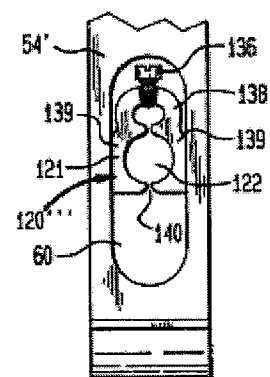
Rejections Pursuant to 35 U.S.C. §102

Claims 1-6, 8, 10-18, 27, 28, and 40-54 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,558,622 of Greenberg ("Greenberg"). Applicants respectfully disagree.

In relevant part, independent claim 1 recites an elongate member and a guide member having first and second pathways extending therethrough and extending substantially parallel to at least a portion of a front surface of a distal portion of the elongate member. Similarly, independent claim 40 recites, in relevant part, an elongate member and a guide member having first and second pathways formed therein that extend substantially parallel to at least a portion of a distal, tissue-retracting portion of the elongate member.

Greenberg does not disclose a guide member having first and second pathways that extend substantially parallel to at least a portion of a distal portion of the elongate member. The Examiner identifies the retractor blade (54') as an elongate member and the guide (120'') as a guide member having first and second pathways in the hole (122). As shown in Figure 27B, reproduced at right, the first and second pathways in the hole (122) clearly extend *perpendicular* to the retractor blade (54'), which is not *substantially parallel* as recited in claims 1 and 40. Accordingly,

FIG. 27B



independent claims 1 and 40, as well as claims 2-6, 8, 10-18, 27, and 28 which depend from claim 1 and claims 41-54 which depend from claim 40, distinguish over Greenberg and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. §103

Claims 29, 30, and 37-39 are rejected pursuant to 35 U.S.C. §103(a) as being unpatentable over Greenberg. Applicants respectfully disagree.

Claims 29 and 30

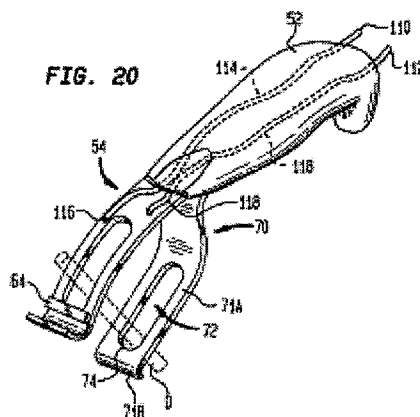
Claims 29 and 30 each depend from claim 1. Accordingly, each is patentable over Greenberg at least for the same reasons that claim 1 is patentable.

Claims 37-39

Independent claim 37 recites first and second tissue retractor and guide devices adapted to couple to a spinal implant. The first and second devices have a guide member having opposed front and back sidewalls, opposed lateral sidewalls extending between the front and back sidewalls, and at least one pathway formed therein for receiving a tool. The first and second devices also have an elongate member having a proximal, handle portion, and a distal, tissue-retracting portion coupled to the back sidewall of the guide member. Claim 37 also recites a cross member removably connected to the first and second tissue retractor and guide devices.

The only discussion provided by the Examiner in the text following the rejection of claim 37 relates to Applicants' previous admission that clamp members and posts are well known in the art. That is irrelevant to claim 37 as claim 37 does not recite a clamp member or a post, nor does either of its dependent claims 38 and 39. Claim 37 does recite a cross member, but Applicants have never asserted that cross members are well known in the art. Further, a cross member is not a clamp member nor a post, as has been repeatedly made clear and recognized by both the Examiner and Applicants in previously filed papers that separately argue these various claim recitations.

Applicants cannot find a cross member removably connected to first and second tissue retractor and guide devices in Greenberg. The Examiner does not identify such a cross member, but in discussing the anticipation rejection, the Examiner refers to Figure 20, reproduced at right, and states that Greenberg's device can be coupled with a second retractor. However, Figure 20 does not show a cross member. Figure 20 does not even show two retractor and guide devices. Rather, Figure 20 illustrates a handle (52) having a retracting blade (54) and a stabilizing arm (70) extending therefrom. The stabilizing arm (70) is present merely to stabilize a surgical instrument (D) inserted through the retractor blade's distal aperture and does not get inserted into a patient's body. (See Col. 6, lines 56-65.) As such, the stabilizing arm (70) at least does not have the claimed elongate member having a tissue-retracting portion, much less the claimed guide member having the recited sidewalls. Moreover, even if the retracting blade (54) and the stabilizing arm (70) are considered tissue retractor and guide devices despite them each missing multiple recited claim elements, there is absolutely no indication in Greenberg that the handle (52) is removable, much less connectable to two tissue retractor and guide devices.



Accordingly, independent claim 37, as well as claims 38 and 39 which depend therefrom, distinguish over Greenberg and represent allowable subject matter.

Unspecified Rejections of Claims 31-36 and 55

Claims 31-36 and 55 are not mentioned anywhere in the Office Action except in the Summary where they are listed as rejected. Applicants thank the Examiner for clarifying on October 22, 2008 by telephone to Applicants' representative Christina Sperry that claims 31-36 and 55 were intended to be rejected pursuant to 35 U.S.C. §102(b) as being anticipated by Greenberg with reference to the Figures cited in the rejection of claims 1-6, 8, 10-18, 27, 28, and 40-54.

Claims 31-36

Independent claim 31 recites an elongate member having a proximal portion and a distal portion that is adapted to retract tissue. A guide member is coupled to the distal portion of the elongate member, and it is adapted to be juxtapositioned on a spinal implant. The guide member includes at least one pathway extending therethrough for receiving a tool, and at least one cut-out portion in a front sidewall of the guide member adapted to provide visual access to the spinal implant.

Greenberg does not disclose at least one cut-out portion in a front sidewall of the guide member. As clearly shown in Figure 27B above, the hole (122) in the guide (120'') extends all the way through the guide (120'') between proximal and distal ends and thus cannot be a cut-out portion in a front *sidewall* of the guide (120''). Accordingly, independent claim 31, as well as claims 32-36 which depend therefrom, distinguish over Greenberg and represent allowable subject matter.

Claim 55

Claim 55 ultimately depends from independent claim 40 and is patentable for at least the same reasons as claim 40. Furthermore, claim 55 recites a cross member effective to mate two tissue retractor guide devices to one another, and similar to that discussed above regarding claim 37, Greenberg does not disclose such a cross member.

Conclusion

Accordingly, all claims are now in condition for allowance, and allowance thereof is respectfully requested. Applicants' amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

No extension of time is believed to be due with this filing. In the event that a petition for an extension of time is required to be submitted at this time, Applicants hereby petition under 37

C.F.R. 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned.

All fees due are believed to be paid. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 141449, under Order No. 101896-234.

Dated: November 12, 2008

Respectfully submitted,

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Attachments

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